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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

1 2005 AUG 29 1P 3:52

July 29, 2005

Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 5581;
Nader for President 2004 and Carl Mayer,
in his official capacity as Treasurer

Dear Sir or Madam,

As counsel for Nader for President 2004 and Carl Mayer, I have enclosed the Certification of Theresa Amato in reply to the Commission's Factual and Legal Analysis dated July 8, 2005.

I believe this certification addresses the questions raised by the Commission on this MUR and I am hopeful that the Commission can now dismiss this matter.

As always, the Nader campaign remains fully at your disposal for any questions or inquiries and I would request that you contact me if further information should arise in connection with this MUR.

Very truly yours,



Bruce I. Afran
Counsel, Nader for President 2004

Enclosure

By Hand Delivery

26044143414

Before the Federal Election Commission

In re

MUR 5581

NADER FOR PRESIDENT 2004

THERESA AMATO certifies as follows:

1. I am the campaign manager of Nader for President 2004. I make this certification in response to the Federal Election Commission's (the Commission) "Factual and Legal Analysis", dated July 8, 2005, in connection with MUR 5581.

2. In connection with MUR 5581, the Commission has determined to inquire into certain factual assertions relating to the Nader campaign in the State of Arizona.

3. MUR 5581 was one of at least six (6) MUR's commenced as a result of certain complaints filed against the Nader campaign in connection with the 2004 presidential election. In each case, the complaints were premised upon newspaper reports and not the express statement of persons with knowledge of the facts. My understanding is that as to all MUR's (aside from the present matter) the Commission is preparing or has already ordered dismissals of the complaints.

4. As with the others, the instant MUR is predicated upon a complaint based solely upon comments of two individuals reported in newspaper articles. While the Commission's fact finding power obviously extends to reviewing information conveyed through the news media, the Nader committee must stress that such evidence in itself,

without more, will not usually be a reliable means of establishing factual findings.

Indeed, the campaign has been forced by these multiple complainants to dedicate extensive resources in addressing hearsay assertions that have, to date, resulted uniformly in dismissals by the Commission. We suspect that draining our resources was the intent and goal of these complainants.

5. The instant matter demonstrates the difficulties posed by complainants who rely on newspaper reports and not personal knowledge of the facts. This certification should establish that there is no basis for the Commission to proceed further on this investigative matter.

6. The Nader campaign, faced with early deadlines and difficult signature gathering requirements imposed on independent candidates in states such as Arizona, which required 14,694 signatures in the 2004 election, was forced to hire outside signature gatherers to fulfill the threshold requirements. These companies are commonly used in political campaigns where large numbers of signatures are required and for political referendums which often require even greater signature thresholds than for individual candidates. Such companies are professional organizations that work for a multiplicity of political parties and organizations, often of conflicting ideologies.

7. The Nader campaign hired JSM, Inc. (JSM) as a third party signature-gathering provider. JSM was hired in an arms length transaction, had no political connection with the Nader campaign and, to my understanding, traditionally works for hire across the political spectrum.

8. As I understand the July 8, 2004 Factual and Legal Analysis, this investigative phase of MUR 5581 concerns two issues: 1) whether JSM received signatures from

outside political committees that represent an excess in-kind contribution to Nader for President; and 2) whether outside entities gave money to JSM in connection with the Nader campaign which would represent an improper or excess contribution.

9. By signed agreement dated May 21, 2004, Nader for President agreed to hire JSM to gather 10,000 signatures for Ralph Nader as a presidential candidate in Arizona at an agreed rate of one dollar and fifty cents (\$1.50) for each signature. See, Contract annexed hereto. By verbal agreement, the campaign later agreed to increase the contract to 20,000 signatures.

10. This was a fair market rate for such services and was consistent with the range of payments made by the Nader campaign in other states to other entities performing similar services. The campaign paid a \$2,500 retainer to JSM to commence such services. See check # 2660 annexed hereto.

11. JSM ultimately billed Nader for President for 20,402 signatures.

12. In addition, Nader volunteers, working under the supervision of Cheryl Rohrick, the campaign's Arizona coordinator, gathered approximately 1,100 signatures.

13. All of the signatures delivered by JSM were paid by Nader for President at the agreed rate of one dollar and fifty cents (\$1.50) per signature.

14. Based upon the \$1.50 rate, Nader for President paid Thirty Thousand, Six Hundred and Three dollars (\$30,603) to JSM for these signatures: this payment represents JSM's 20,402 signatures multiplied by the agreed rate of \$1.50, which equals the sum of \$30,603. In addition, JSM billed the Nader campaign for printing expenses in the amount of \$760.00, for a total due of \$31,363.

15. This sum was paid by means of three separate checks from the Nader campaign:
1) check no. 2660, dated May 21, 2004, in the amount of \$2,500 (the initial retainer check); 2) check no. 2797, dated June 8, 2004, in the amount of Twenty Thousand dollars (\$20,000); and 3) check no. 2832, dated June 16, 2004, in the amount of Eight Thousand, Eight Hundred and Sixty-Three dollars (\$8,863). See checks annexed hereto and JSM facsimile invoice dated June 12, 2004.

16. Consequently, Nader for President met its obligations to JSM at the agreed contractual rate.

17. Arizona recorded a total of 21,512 signatures filed by the Nader campaign.

18. These consisted of approximately 1,100 signatures gathered by our volunteers and 20,402 attributed to JSM.

19. To my knowledge no other signatures for Ralph Nader were filed with the State of Arizona.

20. Since the Nader campaign paid for all signatures received from JSM, the campaign received no surplus contribution in the form of signatures for which no payment was made.

21. Based on newspaper reports, the complainant in MUR 5581 asserts that certain "Republicans" gathered signatures for the Nader campaign in Arizona and then gave such signatures to the Nader campaign's paid vendor, JSM.

22. Also based on newspaper reports, the complainant asserts that "Republicans" allegedly raised money for the Nader campaign for the purpose of aiding the campaign's signature gathering.

23. I have no personal knowledge as to these allegations aside from the contents of these newspaper articles and media inquiries to our staff seeking comment as to these same allegations.

24. We normally do not know the political affiliation of persons who contribute money to our campaign, but to my knowledge all contributions received by the campaign in Arizona or elsewhere were properly reported in the ordinary course of reporting. I believe the Commission is also aware of the great efforts the Nader campaign has made to keep its records and reporting in the highest degree of compliance with statutes and regulations.

25. As to the first assertion that "Republicans" gave money to JSM, I have absolutely no knowledge about such facts and there was no reason for anyone to have done so. The Nader campaign paid its bill to JSM promptly and had budgeted in advance for such costs. In fact, the campaign paid its bill in full by June 16, 2004 within four (4) days of JSM's June 12, 2004 invoice. See checks annexed hereto, the last of which was dated June 16, 2004 in the amount of \$8,863, which closed the balance due on JSM's June 12, 2004 invoice.

26. As to the second assertion that "Republicans" gathered signatures and gave these to JSM, I again have no knowledge of such actions.

27. Even if, unknown to the Nader campaign, some of JSM's signatures were gathered by "Republican" groups, there would still be no in-kind contribution because the Nader campaign in good faith paid the agreed fair market price for all signatures that the campaign received from JSM regardless of their ultimate origin.

28. JSM is a signature gathering corporation that was hired as an outside vendor by the Nader campaign to gather signatures "by and from registered voters in the state of Arizona" at the rate of \$1.50 per signature. See Agreement, 5/21/04, annexed hereto.

29. JSM had no access to or use of the Nader campaign's funds and no authority or capacity to "spend" campaign funds under 11 C.F.R. 300.2(b)(3). Any payments by the campaign to JSM (aside from the initial good faith retainer of \$2,500) were made for services actually rendered by JSM. Since JSM did not have authority to "spend" campaign funds, it was not an "agent" for such purposes under 11 C.F.R. 300.2(b)(3).

30. Similarly, JSM had no authority to "solicit, receive, direct [or] transfer funds" in connection with the campaign and did not become an "agent" of the campaign for such purposes under section 300.2(b)(3). It would be an implausible inference that a direct and clearly stated contract for hire for the limited purpose of gathering signatures could convert a vendor into a solicitor or receiver of campaign funds.

31. As to the claim of monies allegedly raised by Mr. Wark, the campaign has no knowledge (outside of news reports) that an individual named "Wark" or any other person gave money that ultimately was received by JSM. Wark is quoted in an editorial from the Charleston Gazette as stating that he gave funds to a group called Choices for America which then gave the funds to JSM. Whether this statement is true is beyond the knowledge of myself or the Nader campaign – we simply have no information outside of the news reports as to these claims.

32. Other news coverage disputes the assertions attributed to Wark. For example, the Las Vegas Review-Journal reported that JSM's president, Jenny Breslin, testified under oath in a Nevada court that she had received no funding from Wark, that she never met

Wark and that she was paid by the Nader campaign. *Las Vegas Review-Journal*, September 1, 2004. Breslin's statement, unlike Wark's newspaper quotes, was made under oath and in a courtroom. This contrast in news coverage demonstrates the uncertainty in fact finding caused by use of un-sworn news media reports.

33. Wark's claims, even if true, should not be imputed to the Nader campaign. JSM had no authority to receive or solicit funds for the campaign's signature gathering efforts and was to be paid by the campaign on a contractual work for hire basis at \$1.50 per signature, a fair market rate for professional signature gatherers around the country. Any action of JSM in receiving or soliciting funds to support its signature gathering work was ultra vires and beyond the scope of its authorized actions on behalf of the Nader campaign.

34. If, arguendo, JSM did receive such funds (of which there is still no evidence outside of news reports), the Nader campaign never received or benefited from such funds. The Nader campaign owed JSM only for the contract rate of \$1.50 per signature and, as is undisputed, paid JSM promptly for such services. While the campaign still has no information that would support these allegations, any funds that were sent to JSM by Wark (or others) would have resulted in no benefit to the campaign: the campaign had no unpaid obligation to JSM which such funds could have settled and the campaign never received the money Wark allegedly paid. Consequently, any action by JSM in receiving such funds (which JSM's president Jenny Breslin has already denied under oath) could not fairly be attributed to Nader for President.

35. Finally, JSM could not reasonably believe it was authorized to solicit funds. It is well established by the Commission that a principal may not be held liable for an agent's

actions "unless the principal's own conduct reasonably causes the agent to believe that he or she had authority". Advisory Opinion 2003-10. The Nader campaign's contract with JSM describes JSM's scope of authority as the limited function of gathering signatures for a stipulated fee per signature. Nothing in that concise agreement or any other communication the campaign had with JSM could reasonably cause JSM "to believe that [it] had authority" to accept payments from other persons or groups on behalf of the Nader campaign. Any such act by JSM would be ultra vires and cannot in fairness be attributed to the Nader campaign.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 29, 2005.



Theresa Amato



May 24, 2004

Jennifer Breslin, President
JSM Inc.
1324 Seven Springs Boulevard
Unit 307
Newport-Richie, Florida

Dear Jenny:

Enclosed is a copy of the contract between Ralph Nader for President 2004 and JSM, Inc., for the collection of signatures to put Ralph Nader on the ballot in the state of Arizona. The contract has been amended and each of us has initialed the changes.

Also enclosed is a check, for the deposit required by JSM, in the amount of two-thousand five hundred (\$2,500.00) dollars.

Regards,


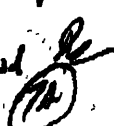
A handwritten signature in dark ink, appearing to read "Theresa Amato". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Theresa Amato
Campaign Manager
Nader for President 2004

Enclosures

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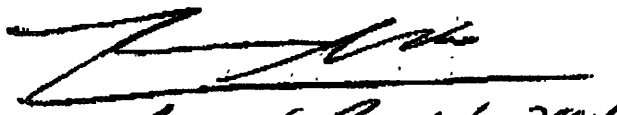
This contract is between Ralph Nader for President and JSM Inc., a Florida Corporation. JSM will collect up to 10,000 Nader for President signatures in the state of Arizona with a 70% accuracy rate. These signatures will be gathered from registered voters in the state of Arizona. JSM will be the only professional signature gathering company hired and will be paid \$1.50 per signature. JSM further requests to be considered to gather signatures for Nader for President in the following states: New Mexico, Ohio, and Nevada. JSM will agree to do all of the above states for \$1.50 per signature with a 70% validity guarantee. JSM will require a \$2,500.00 deposit. JSM's signature gathering will commence immediately.


by and 



Jennifer Breslin, Pres.

05/21/04


Nader for President 2004
5/21/04

26044143424



Lynda Tralster
Check No. 1157
Date: 08/11/2004
Pay to the order of: CFS
Amount: \$30.00
APPROPRIATED BANK
Claim ID 19174360
Check #081278 for \$148.34 to ROSS STORES 422
1-866-834-5129
For: [redacted]

#1157 \$30.00
MADE FOR PRESENTMENT 2576
Pay to the order of: [redacted]
Date: 8/11/04
Amount: \$30.00
For: [redacted]

LYNDA TRALSTER
Check No. 1274
Date: 08/11/2004
Pay to the order of: [redacted]
Amount: \$50.00
For: [redacted]

#1274 \$50.00
MADE FOR PRESENTMENT 2660
Pay to the order of: [redacted]
Date: 8/11/04
Amount: \$50.00
For: [redacted]

#2576 \$30.00
MADE FOR PRESENTMENT 2576
Pay to the order of: [redacted]
Date: 8/11/04
Amount: \$30.00
For: [redacted]

#2680 \$2,500.00
MADE FOR PRESENTMENT 2680
Pay to the order of: [redacted]
Date: 8/11/04
Amount: \$2,500.00
For: [redacted]

#2678 \$650.00
MADE FOR PRESENTMENT 2678
Pay to the order of: [redacted]
Date: 8/11/04
Amount: \$650.00
For: [redacted]

#2887 \$1,068.84
MADE FOR PRESENTMENT 2887
Pay to the order of: [redacted]
Date: 8/11/04
Amount: \$1,068.84
For: [redacted]

#2901 \$62.77
MADE FOR PRESENTMENT 2901
Pay to the order of: [redacted]
Date: 8/11/04
Amount: \$62.77
For: [redacted]

#2970 \$333.33
MADE FOR PRESENTMENT 2970
Pay to the order of: [redacted]
Date: 8/11/04
Amount: \$333.33
For: [redacted]

#2989 \$50.00
MADE FOR PRESENTMENT 2989
Pay to the order of: [redacted]
Date: 8/11/04
Amount: \$50.00
For: [redacted]

#2980 \$500.00
MADE FOR PRESENTMENT 2980
Pay to the order of: [redacted]
Date: 8/11/04
Amount: \$500.00
For: [redacted]

#3025 \$125.00
MADE FOR PRESENTMENT 3025
Pay to the order of: [redacted]
Date: 8/11/04
Amount: \$125.00
For: [redacted]

#3026 \$300.00
MADE FOR PRESENTMENT 3026
Pay to the order of: [redacted]
Date: 8/11/04
Amount: \$300.00
For: [redacted]

26044143425

Securely enhanced document. See back for details.

NADER FOR PRESIDENT 2004

2797

DATE

6/8/04

15-167/540
08

PAY
TO THE
ORDER OF

ISM Inc.

\$ 20,000.00

Twenty thousand dollars & 0/100

DOLLARS



1825 K Street N.W.
Washington, DC 20006

FOR

ballot access - AZ

[Redacted signature area]

6004143425

Security enhanced document See back for details

NADER FOR PRESIDENT 2004

2832

DATE

6/16/04

15-187/540
08

PAY
TO THE
ORDER OF

ICM Inc

\$ 8,863.00

Eight thousand eight hundred and sixty three dollars & 1/100 DOLLARS



1025 K Street NW
Washington, DC 20005

FOR

Ballot access - AZ

GUARDIAN • SAFETY

SCOTTSDALE COMFORT SUITES

GARY FUCHS
GENERAL MANAGER3275 DRINKWATER BOULEVARD
SCOTTSDALE, AZ 85251
PHONE 480.946.1111
FAX 480 874 1641

BY CHOICE HOTELS

Invoice

JSM

Date: 6/12/04

Feed x ck to Jenny Breckin
Room 104
Please make ck payable
to JSM IN -

To: NINIFrom: Jenny Breckin "JSM"

Deposit to: _____

Mail Ck to: Same Send Ck to A2. Comfort SuitesWire Transfer to: 3275 Drinkwater Blvd
Scottsdale AZ - 85251

(over note)

Room 104

Job Nader for Pwr.# Sigs 19973 X+ 429 (1/2 of 8580 price) OK by Finance Dept20402 X1.0030,603credit - 2500 = 1st ck.credit - 20000 = 2nd ck.Bal Due 8,103.00

Lodging - travel

Printing 500 sheets x 2 → 380.00 x 2

Misc. Expense

760.00

Total \$

8863.00

26044143428